

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

August 2, 2019

Samuel C. Griffie, Esquire
Attorney for the City of Amory
Post Office Box 334
Amory, Mississippi 38821-0334

Re: Multiple referenda on same ballot

Dear Mr. Griffie:

Attorney General Jim Hood received your letter of request and assigned it to me for research and reply.

Background

Your letter states that the City of Amory conducted local option elections for both liquor and beer in 2014 and neither passed. It is anticipated that the City will be presented with petitions seeking to again vote on local options for both liquor and beer.

The City has local and private legislation which authorizes the governing authorities to levy and collect a tax on every person, firm or corporation operating a motel or hotel in the City at a rate not to exceed two percent (2%) of the gross proceeds of room rentals for each such hotel or motel, commonly referred to as a tourism tax, provided that sixty percent (60%) of the qualified electors of the municipality vote in favor of the tax in an election held on a date set forth in a resolution adopted by the municipal governing authorities.

If a sufficient number of qualified electors sign petitions for the local option elections, the City would like to include those elections on the same ballot as the question on the tourism tax.

The proposed elections would be conducted on a day other than this year's General Election.

You state that the City would follow the necessary procedures and notice requirements for each election as set forth in the statutes and the local and private legislation.

It is our understanding that any local option election on beer will be conducted at least five (5) years from the date of the last such election in 2014 as required by Section 67-3-9 of the Mississippi Code.

Issues

1. In the event the City is required to have the special election under the local option statute, can the City also allow for a vote on the tourism tax at the same special election?
2. Can both local option measures and the tourism tax all be on the same ballot, as long as all notice requirements are met and voters are allowed to vote for or against each issue?

Response

We find no legal impediment to having a liquor and/or beer local option election at the same time and on the same ballot as a tourism tax special election.

All statutory petitions, orders, resolutions, notices, publications and any other applicable statutory requirements for each type of election must be followed and the required resolution and order(s) calling for the elections must, of course, provide that the respective elections are to be conducted on the same day.

Applicable Law

Senate Bill 3045, Local and Private Laws, Regular Session 2017 extended the repeal date on Senate Bill 2919, Local and Private Laws, Regular Session 2014 that authorized the governing authorities of the City of Amory to levy a tax on the gross proceeds of sales of restaurants and utilize the revenue to promote tourism and parks and recreation. The repeal date is now July 1, 2021.

Senate Bill 3045 provides, in part:

Before any tax authorized under this act may be imposed, the governing authorities shall adopt a resolution declaring their intention to levy the tax, setting forth the amount of the tax to be imposed, the date upon which the tax shall become effective, and calling for an election to be held on the question. The date of the election shall be fixed in the resolution. Notice of such intention shall be published once each week for at least three (3) consecutive weeks in a newspaper published or having a general circulation in the City of Amory, with the first publication of the notice to be

made not less than twenty-one (21) days before the date fixed in the resolution for the election and the last publication to be made not more than seven (7) days before the election. At the election, all qualified electors of the City of Amory may vote, and the ballots used in the election shall have printed thereon a brief statement of the amount and purposes of the proposed tax levy and the words "FOR THE TAX" and, on a separate line, "AGAINST THE TAX," and the voters shall vote by placing a cross (X) or check (✓) opposite their choice on the proposition. When the results of the election shall have been canvassed and certified, the city may levy the tax if sixty percent (60%) of the qualified electors who vote in the election vote in favor of the tax. At least thirty (30) days before the effective date of the tax provided in this section, the governing authorities shall furnish to the Department of Revenue a certified copy of the resolution evidencing the tax.

Section 67-1-14 sets forth the procedures that must be followed for municipalities to have a local option election on liquor. It provides, in part:

(2)(a) Any municipality in this state having a population of not less than five thousand (5,000) according to the latest federal census and which is located in a county which has voted against coming out from under the dry law, or any municipality that is a county seat and which is located in a county which has voted against coming out from under the dry law, may, at an election held for the purpose under the election laws applicable to such municipality, either prohibit or permit, except as otherwise provided under Section 67-9-1, the sale, and the receipt, storage and transportation for the purpose of sale, of alcoholic beverages. An election to determine whether such sale and possession shall be permitted in municipalities wherein its sale and possession is prohibited by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. In like manner, an election to determine whether such sale and possession shall be prohibited in municipalities wherein its sale is permitted by law shall be ordered by the municipal governing authorities upon the presentation of a petition to such governing authorities containing the names of at least twenty percent (20%) of the duly qualified voters of such municipality asking for such election. No election on either question shall be held by any one (1) municipality more often than once in two (2) years.

Thirty (30) days' notice shall be given to the qualified electors of such municipality, in the manner prescribed by law, upon the question of either permitting or prohibiting such sale and possession, such notice to contain a statement of the question to be voted on at the election. The ballots to

be used in the election shall have the following words printed thereon: "For the legal sale of alcoholic liquors" and the words "Against the legal sale of alcoholic liquors" next below. In marking his ballot the voter shall make a cross (X) opposite the words of his choice.

Section 67-3-9 sets forth the procedures that must be followed by municipalities to have a local option election on beer and light wine. It provides, in part:

Any city in this state, having a population of not less than two thousand five hundred (2,500) according to the latest federal census; or any city in this state having a population of not less than one thousand five hundred (1,500) according to the latest federal census and located within three (3) miles of a city or county that permits the sale, receipt, storage and transportation for the purpose of sale of beer or light wine; at an election held for the purpose, under the election laws applicable to such city, may either prohibit or permit, except as otherwise provided under Section 67-9-1, the sale and the receipt, storage and transportation for the purpose of sale of beer and light wine. An election to determine whether such sale shall be permitted in cities wherein its sale is prohibited by law shall be ordered by the city council or mayor and board of aldermen or other governing body of such city for such city only, upon the presentation of a petition for such city to such governing board containing the names of twenty percent (20%) of the duly qualified voters of such city asking for such election. In like manner, an election to determine whether such sale shall be prohibited in cities wherein its sale is permitted by law shall be ordered by the city council or mayor and board of aldermen or other governing board of such city for such city only, upon the presentation of a petition to such governing board containing the names of twenty percent (20%) of the duly qualified voters of such city asking for such election. No election on either question shall be held by any one (1) city more often than once in five (5) years.

Thirty (30) days' notice shall be given to the qualified electors of such city in the manner prescribed by law upon the question of either permitting or prohibiting such sale, and the notice shall contain a statement of the question to be voted on at the election. The tickets to be used in the election shall have the following words printed thereon: "For the legal sale of light wine of an alcoholic content of not more than five percent (5%) by weight and beer of an alcoholic content of not more than eight percent (8%) by weight"; and the words "Against the legal sale of light wine of an alcoholic content of not more than five percent (5%) by weight and beer of an alcoholic content of not more than eight percent (8%) by weight," next below. In making up his ticket the voter shall make a cross (X) opposite the words of his choice.

If in the election a majority of the qualified electors voting in the election

Samuel C. Griffie, Esquire
August 2, 2019
Page 5

shall vote "For the legal sale of light wine of an alcoholic content of not more than five percent (5%) by weight and beer of an alcoholic content of not more than eight percent (8%) by weight," then the city council or mayor and board of aldermen or other governing body shall pass the necessary order permitting the legal sale of such light wine and beer in such city. If in the election a majority of the qualified electors voting in the election shall vote "Against the legal sale of light wine of an alcoholic content of not more than five percent (5%) by weight and beer of an alcoholic content of not more than eight percent (8%) by weight," then the city council or mayor and board of aldermen or other governing body shall pass the necessary order prohibiting the sale of such light wine and beer in such city.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION